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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,615	12/14/2005	Guy Menchik	P-5390-US	7452
49443 7590 07/18/2008 Pearl Cohen Zedek Latzer, LLP 1500 Broadway 12th Floor New York, NY 10036				
EXAMINER JARRETT, RYAN A				
ART UNIT		PAPER NUMBER		
2121				
MAIL DATE		DELIVERY MODE		
07/18/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/534,615

Applicant(s)

MENCHIK ET AL.

Examiner

Ryan A. Jarrett

Art Unit

2121

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40-64 is/are pending in the application.
4a) Of the above claim(s) 55-64 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 40-54 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☒ Claim(s) 40-54 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 11 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date 05/11/05, 02/21/06
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Inventor's Patent Application
6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I, claims 40-54 in the reply filed on 05/22/08 is acknowledged. The traversal is on the ground(s) that the claims were amended to be patentably indistinct from each other and thus linked to form a single inventive concept. This is not found persuasive because there are still key distinctions between apparatus claim 40 and method claim 55 (it is noted that previously independent claim 63 has been amended to be in dependent form). For example, apparatus claim 40 does not require “determining parameters of said building material”, or “controlling a supply of building material...according to said parameters” as required by method claim 55. And any features that claim 40 might share with claim 55 are not special, as evidenced by the prior art cited below (Varnon et al. US 2003/0063138).

The requirement is still deemed proper and is therefore made FINAL.

Claims 55-64 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 05/22/08.

Based on the search and examination conducted for claim 40, further restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 40 and 41, drawn to each sensor associated with a respective cartridge.

Group II, claim(s) 40 and 42, drawn to a mass sensor.

Group III, claim(s) 40 and 43, drawn to a cartridge array.

Group IV, claim(s) 40 and 44, drawn to a memory device reader coupled to a cartridge casing.

Group V, claim(s) 40 and 45, drawn to a memory device coupled to cartridge.

Group VI, claim(s) 40, 46, and 54, drawn to a bag to store building materials.

Group VII, claim(s) 40, and 47-49, drawn to a valve matrix.

Group VIII, claim(s) 40 and 50, drawn to calculating material parameters.

Group IX, claim(s) 40 and 51-53, drawn to a source of electromagnetic radiation.

The inventions listed as Groups I-IX do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

Although Groups I-IX all share the technical features of claim 40, the features of claim 40 are not “special”, as evidenced by the prior art cited below (Varnon et al. US 2003/0063138).

Claim 40 link(s) inventions I-IX. The restriction requirement among the linked inventions is **subject to** the nonallowance of the linking claim(s), claim 40. Upon the indication of allowability of the linking claim(s), the restriction requirement as to the linked inventions **shall** be withdrawn and any claim(s) depending from or otherwise requiring all the limitations of the allowable linking claim(s) will be rejoined and fully examined for patentability in accordance with 37 CFR 1.104 **Claims that require all the limitations of an allowable linking claim** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

Applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, the allowable linking claim, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 40-54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 40 recites “to provide building materials”, “to determine the status”, and “to receive data...and to control switching”. It is unclear if the claimed elements actually contain these functionalities or if they are only intended to contain these functionalities, i.e., intended uses.

For example, any controller is capable of receiving data and controlling switching, if programmed or hard wired to do so. Applicant has recited no such apparent program or hardware elements in claim 40 that would give said controller the recited intended functionality. As such, it becomes difficult to ascertain what Applicant’s intended scope actually is.

Claims 41-54 depend from claim 40 and incorporate the same deficiencies.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 40 is rejected under 35 U.S.C. 102(c) as being anticipated by Varnon et al. US 2003/0063138 (“Varnon”).

Varnon discloses:

40. A three-dimensional printing system to print a three-dimensional object, comprising:

one or more printing heads (e.g., Figs. 2-3, [0055]);

two or more cartridges (e.g., Figs. 2-4, [0049], [0053], [0059]) to provide building material to print said three-dimensional object;

two or more sensors (e.g., [0049], [0053]) to determine the status of building materials in said cartridges; and

a controller (e.g., [0049], [0053], [0059]) to receive data from said sensors and to control switching of building material supply from one cartridge to another.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan A. Jarrett whose telephone number is (571) 272-3742. The examiner can normally be reached on 10:00-6:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert Decady can be reached on (571) 272-3819. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ryan A. Jarrett/
Primary Examiner, Art Unit 2121

07/17/08